

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**PLAINTIFF'S RESPONSE TO
THE MOTION FOR
EXTENSION OF TIME BY
CHRISTOPHER SWECKER
AND CHRISTOPHER
SWECKER ENTERPRISES,
LLC (ECF NO. 255)**

Non-parties Christopher Swecker and Christopher Swecker Enterprises, LLC (collectively “Movants”) were served with the subpoena at issue nearly seven months ago (on January 24, 2023). During that time, they have not produced a single document or a privilege log, and have failed to provide support for their privilege contentions, including basic information such as engagement letters. Movants have violated the Court’s Order of July 25, 2023, but now seek more time to comply. Movants’ delay appears to be part of a concerted effort with Defendants and Dechert LLP to delay and obstruct discovery in this case for as long as possible.

Movants now ask for an additional six-and-a-half weeks to produce any of their responsive documents due to a death in Mr. Swecker’s family in July and a last-minute, voluntary change of counsel. While Plaintiff is sympathetic to Mr. Swecker and extends his condolences for Mr. Swecker’s loss, production

under this subpoena was originally due on February 8, 2023, and the Court ordered production of all responsive documents by August 8, 2023. There is no indication that Movants have taken any steps to comply with the subpoena. They have not produced a single document (of which they potentially have “several thousand”), nor have they begun (or even promised) any rolling production that would begin to comply with the Court’s Order. Plaintiff agreed to a 10-day extension of time due to the death in Mr. Swecker’s family, but that new deadline was ignored. More than six weeks is an unnecessarily long extension request, particularly when there are only 12 weeks remaining in the discovery period. At the time of this filing, Movants have had four weeks to comply with the subpoena but have not produced a single document.

In addition, Movants suggest that they may withhold some documents for privilege, but Movants have not supported that contention with any documentary evidence such as engagement letters. In a February 7, 2023, declaration, Mr. Swecker claimed that he worked for Defendants but said that even the nature of his services was “confidential and protected by the attorney client privilege.” ECF No. 153-2 ¶¶ 4-5. Recent discovery, however, demonstrates that Mr. Swecker attended numerous meetings with Dechert LLP, Northern Technology Inc., and others who worked for Ras Al Khaimah.*

*Defendants and Dechert continue to legend every document produced in this case as confidential, making motions practice burdensome on Plaintiff

It appears from the limited facts made available thus far in discovery that Mr. Swecker was engaged to work for RAK rather than as Defendants' personal lawyer. If that is true, RAK – not Mr. Swecker – must assert any purported privilege, which it has not done during the almost three-year pendency of this case.

In addition, Dechert has already essentially admitted that the crime fraud exception applied to at least some of its communications with Swecker. *See* ECF No. 271 at 5-6. Indeed, Dechert has produced email correspondence between its agent Defendant Nicholas Del Rosso and Swecker that was originally labeled “privileged,” thereby waiving any remaining purported privilege. Furthermore, RAK has disavowed some of the conduct by its third-party advisors – such as Dechert and Defendants – as being outside of any privileged relationship. Movants’ privilege claims will have to be evaluated in the context of the crime fraud exception, after Movants (or the appropriate privilege holders) produce any engagement letters and related communications about the scope of any engagement. Movants’ request for a significant extension – almost to the end of discovery – may result in even more delays, potentially beyond the close of discovery ordered by the Court.

and the Court. Plaintiff will deal with this unreasonable and burdensome position in due course, but at this time does not wish to burden the Court with additional motions to seal.

The Court should reject Movants' request for additional time and order production immediately. Plaintiff consented to a 10-day extension of time, but Movant has missed that deadline as well. At the very least, Movants should immediately begin a rolling production and produce all engagement letters and any other documents supporting any privilege contention they intend to make so that the Court has time to consider any disputes about the scope of any purported privilege prior to the Court-ordered close of discovery on October 31, 2023. The Court should not allow Movants to run out the clock until the end of discovery before they produce even a single document.

CONCLUSION

For the reasons stated above, Movants' motion for extension of time should be denied.

This, the 18th day of August, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ Ripley Rand

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CERTIFICATE OF WORD COUNT

The undersigned certifies compliance with Local Rule 7.3(d) regarding length limitations. This memorandum contains fewer than 6,250 words. The undersigned has relied on the word count feature of Microsoft Word 365 in making this certification.

/s/ Ripley Rand

Ripley Rand
Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

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This, the 18th day of August, 2023.

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